

**ELECTRIC VEHICLE BATTERY CHARGING SERVICE****AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill amends the Public Utilities title.

**Highlighted Provisions:**

This bill:

- ▶ provides that the definition of "public utility" does not include certain entities that sell electric vehicle battery charging services.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**54-2-1**, as last amended by Laws of Utah 2010, Chapters 302 and 390

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **54-2-1** is amended to read:

**54-2-1. Definitions.**

As used in this title:

(1) "Avoided costs" means the incremental costs to an electrical corporation of electric energy or capacity or both that, due to the purchase of electric energy or capacity or both from small power production or cogeneration facilities, the electrical corporation would not have to generate itself or purchase from another electrical corporation.

(2) "Cogeneration facility":

(a) means a facility that produces:

(i) electric energy; and

(ii) steam or forms of useful energy, including heat, that are used for industrial, commercial, heating, or cooling purposes; and

(b) is a qualifying cogeneration facility under federal law.

(3) "Commission" means the Public Service Commission of Utah.

(4) "Commissioner" means a member of the commission.

(5) (a) "Corporation" includes an association and a joint stock company having any powers or privileges not possessed by individuals or partnerships.

(b) "Corporation" does not include towns, cities, counties, conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.

(6) "Distribution electrical cooperative" includes an electrical corporation that:

(a) is a cooperative;

(b) conducts a business that includes the retail distribution of electricity the cooperative purchases or generates for the cooperative's members; and

(c) is required to allocate or distribute savings in excess of additions to reserves and surplus on the basis of patronage to the cooperative's:

(i) members; or

(ii) patrons.

(7) "Electrical corporation" includes every corporation, cooperative association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any electric plant, or in any way furnishing electric power for public service or to its consumers or members for domestic, commercial, or industrial use, within this state, except independent energy producers, and except where electricity is generated on or distributed by the producer solely for the producer's own use, or the use of the producer's tenants, or for the use of members of an association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act, and not for sale to the public generally, and except where the electricity generated is consumed by an owner, lessor, or interest holder, or by an affiliate of an owner, lessor, or interest holder, who has provided at least \$25,000,000 in value, including credit support, relating to the electric plant furnishing the electricity and whose consumption does not exceed its long-term entitlement in the plant under a long-term arrangement other than a power purchase agreement, except a power purchase agreement with an electrical corporation.

(8) "Electric plant" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power.

(9) "Gas corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any gas plant for public service within this state or for the selling or furnishing of natural gas to any consumer or consumers within the state for domestic, commercial, or industrial use, except in the situation that:

(a) gas is made or produced on, and distributed by the maker or producer through, private property:

(i) solely for the maker's or producer's own use or the use of the maker's or producer's tenants; and

(ii) not for sale to others;

(b) gas is compressed on private property solely for the owner's own use or the use of the owner's employees as a motor vehicle fuel; or

(c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely for sale as a motor vehicle fuel.

(10) "Gas plant" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

(11) "Heat corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any heating plant for public service within this state.

(12) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and personal property controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of artificial heat.

(b) "Heating plant" does not include either small power production facilities or cogeneration facilities.

(13) "Independent energy producer" means every electrical corporation, person, corporation, or government entity, their lessees, trustees, or receivers, that own, operate,

94 control, or manage an independent power production or cogeneration facility.

95 (14) "Independent power production facility" means a facility that:

96 (a) produces electric energy solely by the use, as a primary energy source, of biomass,  
97 waste, a renewable resource, a geothermal resource, or any combination of the preceding  
98 sources; or

99 (b) is a qualifying power production facility.

100 (15) "Private telecommunications system" includes all facilities for the transmission of  
101 signs, signals, writing, images, sounds, messages, data, or other information of any nature by  
102 wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that  
103 are owned, controlled, operated, or managed by a corporation or person, including their lessees,  
104 trustees, receivers, or trustees appointed by any court, for the use of that corporation or person  
105 and not for the shared use with or resale to any other corporation or person on a regular basis.

106 (16) (a) "Public utility" includes every railroad corporation, gas corporation, electrical  
107 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone  
108 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,  
109 and independent energy producer not described in Subsection (16)(d), where the service is  
110 performed for, or the commodity delivered to, the public generally, or in the case of a gas  
111 corporation or electrical corporation where the gas or electricity is sold or furnished to any  
112 member or consumers within the state for domestic, commercial, or industrial use.

113 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone  
114 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,  
115 or independent energy producer not described in Subsection (16)(d), performs a service for or  
116 delivers a commodity to the public, it is considered to be a public utility, subject to the  
117 jurisdiction and regulation of the commission and this title.

118 (ii) If a gas corporation, independent energy producer not described in Subsection  
119 (16)(d), or electrical corporation sells or furnishes gas or electricity to any member or  
120 consumers within the state, for domestic, commercial, or industrial use, for which any  
121 compensation or payment is received, it is considered to be a public utility, subject to the  
122 jurisdiction and regulation of the commission and this title.

123 (c) Any corporation or person not engaged in business exclusively as a public utility as  
124 defined in this section is governed by this title in respect only to the public utility owned,

controlled, operated, or managed by the corporation or person, and not in respect to any other business or pursuit.

(d) An independent energy producer is exempt from the jurisdiction and regulations of the commission with respect to an independent power production facility if it meets the requirements of Subsection (16)(d)(i), (ii), (iii), or (iv), or any combination of these:

(i) the commodity or service is produced or delivered, or both, by an independent energy producer solely for the uses exempted in Subsection (7) or for the use of state-owned facilities;

(ii) the commodity or service is sold by an independent energy producer solely to an electrical corporation or other wholesale purchaser;

(iii) (A) the commodity or service produced or delivered by the independent energy producer is delivered to an entity that controls, is controlled by, or affiliated with the independent energy producer or to a user located on real property managed or controlled by the independent energy producer; and

(B) the real property on which the service or commodity is used is contiguous to real property which is owned or controlled by the independent energy producer. Parcels of real property separated solely by public roads or easements for public roads shall be considered as contiguous for purposes of this Subsection (16); or

(iv) the independent energy producer:

(A) supplies energy for direct consumption by a customer that is:

(I) a county, municipality, city, town, other political subdivision, local district, special service district, state institution of higher education, school district, charter school, or any entity within the state system of public education; or

(II) an entity qualifying as a charitable organization under 26 U.S.C. Sec. 501(c)(3) operated for religious, charitable, or educational purposes that is exempt from federal income tax and able to demonstrate its tax-exempt status;

(B) supplies energy to the customer through use of a customer generation system, as defined in Section 54-15-102, for use on the real property where the customer generation system is located;

(C) supplies energy using a customer generation system designed to supply the lesser of:

156 (I) no more than 90% of the average annual consumption of electricity by the customer  
157 at that site, based on an annualized billing period; or

158 (II) the maximum size allowable under net metering provisions, defined in Section  
159 54-15-102;

160 (D) notifies the customer before installing the customer generation system of:

161 (I) all costs the customer is required to pay for the customer generation system,  
162 including any interconnection costs; and

163 (II) the potential for future changes in amounts paid by the customer for energy  
164 received from the public utility and the possibility of changes to the customer fees or charges to  
165 the customer associated with net metering and generation;

166 (E) enters into and performs in accordance with an interconnection agreement with a  
167 public utility providing retail electric service where the real property on which the customer  
168 generation system is located, with the rates, terms, and conditions of the retail service and  
169 interconnection agreement subject to approval by the governing authority of the public utility,  
170 as defined in Subsection 54-15-102(8); and

171 (F) installs the relevant customer generation system by December 31, 2015.

172 (e) Any person or corporation defined as an electrical corporation or public utility  
173 under this section may continue to serve its existing customers subject to any order or future  
174 determination of the commission in reference to the right to serve those customers.

175 (f) (i) "Public utility" does not include any person that is otherwise considered a public  
176 utility under this Subsection (16) solely because of that person's ownership of an interest in an  
177 electric plant, cogeneration facility, or small power production facility in this state if all of the  
178 following conditions are met:

179 (A) the ownership interest in the electric plant, cogeneration facility, or small power  
180 production facility is leased to:

181 (I) a public utility, and that lease has been approved by the commission;

182 (II) a person or government entity that is exempt from commission regulation as a  
183 public utility; or

184 (III) a combination of Subsections (16)(f)(i)(A)(I) and (II);

185 (B) the lessor of the ownership interest identified in Subsection (16)(f)(i)(A) is:

186 (I) primarily engaged in a business other than the business of a public utility; or

187 (II) a person whose total equity or beneficial ownership is held directly or indirectly by  
188 another person engaged in a business other than the business of a public utility; and

189 (C) the rent reserved under the lease does not include any amount based on or  
190 determined by revenues or income of the lessee.

191 (ii) Any person that is exempt from classification as a public utility under Subsection  
192 (16)(f)(i) shall continue to be so exempt from classification following termination of the  
193 lessee's right to possession or use of the electric plant for so long as the former lessor does not  
194 operate the electric plant or sell electricity from the electric plant. If the former lessor operates  
195 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a  
196 period of 90 days following termination, or for a longer period that is ordered by the  
197 commission. This period may not exceed one year. A change in rates that would otherwise  
198 require commission approval may not be effective during the 90-day or extended period  
199 without commission approval.

200 (g) "Public utility" does not include any person that provides financing for, but has no  
201 ownership interest in an electric plant, small power production facility, or cogeneration facility.  
202 In the event of a foreclosure in which an ownership interest in an electric plant, small power  
203 production facility, or cogeneration facility is transferred to a third-party financier of an electric  
204 plant, small power production facility, or cogeneration facility, then that third-party financier is  
205 exempt from classification as a public utility for 90 days following the foreclosure, or for a  
206 longer period that is ordered by the commission. This period may not exceed one year.

207 (h) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel  
208 does not cause the distributor or transporter to be a "public utility," unless the commission,  
209 after notice and a public hearing, determines by rule that it is in the public interest to regulate  
210 the distributors or transporters, but the retail sale alone of compressed natural gas as a motor  
211 vehicle fuel may not cause the seller to be a "public utility."

212 (ii) In determining whether it is in the public interest to regulate the distributors or  
213 transporters, the commission shall consider, among other things, the impact of the regulation  
214 on the availability and price of natural gas for use as a motor fuel.

215 (i) "Public utility" does not include any corporation, cooperative association, or person,  
216 their affiliates, lessees, trustees, or receivers, owning, controlling, operating, or managing an  
217 electric plant or in any way furnishing electricity if the electricity is consumed by an owner,

lessor, or interest holder or by an affiliate of an owner, lessor, or interest holder, who has provided at least \$25,000,000 in value, including credit support, relating to the electric plant furnishing the electricity and whose consumption does not exceed its long-term entitlement in the plant under a long-term arrangement other than a power purchase agreement, except a power purchase agreement with an electrical corporation.

(j) "Public utility" does not include an entity that sells electric vehicle battery charging services, unless the entity conducts another activity in the state that subjects the entity to the jurisdiction and regulation of the commission as a public utility.

(17) "Purchasing utility" means any electrical corporation that is required to purchase electricity from small power production or cogeneration facilities pursuant to the Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

(18) "Qualifying power producer" means a corporation, cooperative association, or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or person, who owns, controls, operates, or manages any qualifying power production facility or cogeneration facility.

(19) "Qualifying power production facility" means a facility that:

(a) produces electrical energy solely by the use, as a primary energy source, of biomass, waste, a renewable resource, a geothermal resource, or any combination of the preceding sources;

(b) has a power production capacity that, together with any other facilities located at the same site, is no greater than 80 megawatts; and

(c) is a qualifying small power production facility under federal law.

(20) "Railroad" includes every commercial, interurban, and other railway, other than a street railway, and each branch or extension of a railway, by any power operated, together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real estate, fixtures, and personal property of every kind used in connection with a railway owned, controlled, operated, or managed for public service in the transportation of persons or property.

(21) "Railroad corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any railroad for public service within this state.



(22) (a) "Sewerage corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage system for public service within this state.

(b) "Sewerage corporation" does not include private sewerage companies engaged in disposing of sewage only for their stockholders, or towns, cities, counties, conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.

(23) "Telegraph corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line for public service within this state.

(24) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telegraph, whether that communication be had with or without the use of transmission wires.

(25) (a) "Telephone corporation" means any corporation or person, and their lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates, manages, or resells a public telecommunications service as defined in Section 54-8b-2.

(b) "Telephone corporation" does not mean a corporation, partnership, or firm providing:

(i) intrastate telephone service offered by a provider of cellular, personal communication systems (PCS), or other commercial mobile radio service as defined in 47 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications Commission;

(ii) Internet service; or

(iii) resold intrastate toll service.

(26) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone whether that communication is had with or without the use of transmission wires.

(27) "Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported, and the receipt,

280 carriage, and delivery of that person and that person's baggage.

281 (28) "Transportation of property" includes every service in connection with or  
282 incidental to the transportation of property, including in particular its receipt, delivery,  
283 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and  
284 hauling, and the transmission of credit by express companies.

285 (29) "Water corporation" includes every corporation and person, their lessees, trustees,  
286 and receivers, owning, controlling, operating, or managing any water system for public service  
287 within this state. It does not include private irrigation companies engaged in distributing water  
288 only to their stockholders, or towns, cities, counties, water conservancy districts, improvement  
289 districts, or other governmental units created or organized under any general or special law of  
290 this state.

291 (30) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates,  
292 pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal  
293 property owned, controlled, operated, or managed in connection with or to facilitate the  
294 diversion, development, storage, supply, distribution, sale, furnishing, carriage, appointment,  
295 apportionment, or measurement of water for power, fire protection, irrigation, reclamation, or  
296 manufacturing, or for municipal, domestic, or other beneficial use.

297 (b) "Water system" does not include private irrigation companies engaged in  
298 distributing water only to their stockholders.

299 (31) "Wholesale electrical cooperative" includes every electrical corporation that is:

300 (a) in the business of the wholesale distribution of electricity it has purchased or  
301 generated to its members and the public; and

302 (b) required to distribute or allocate savings in excess of additions to reserves and  
303 surplus to members or patrons on the basis of patronage.